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SINGLE BENCH

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BEFORE THE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION (S) NO. 6608 /2006

WRIT PETITION UNDER ARTICLES 226 OF THE CONSTITUTION OF INDIA.

PETITIONERS

1. Goverdhan Yadu, aged about 25 years, son of Shri Hemlal yadu, resident of Science College Colony, Qtr No. C-Q-10, Raipur, Chhattisgarh.
2. Bhagwan Das Chendak, son of Shri Kheti Das Chandak, aged about 30 years, resident of C/o Shri Kheti Das Chandak Bazarpara, Bemetara, Distt. Durg (Chhattisgarh)
3. Abhilash Kumar Dahayal, aged about 25 years, son of Shri Mohan Lal Dahayal, resident of C/o. S.Y. Baxi, A 1/14, Loknayak Society, Rohinipuram, Dangania, Raipur Chhattisgarh
4. Nidhi Guptas, aged about 30 years, resident of C/o. R.C. Gupta MIG 8, Meghmalhar Complex Veer Savarkar Nagar, Heerapur, Raipur, Chhattisgrh
5. Sandeep Kumar Soni, aged about 26 years, son of Shri Ghanshyam Soni, resident of Qtr

P.R. No. 6730/06 Presented on dated 24-11-06

RECEIVED-COPY 24-11-06 CLERK to A. G. BILASPUR

OATH COMMISSIONER APARNA MALVIYA CG-2073/96 24/11/06 Bilaspur Chhattisgarh

RIC 24-11-06

THAKUR VIJAY SINGH Asst. Solicitor General of India CHHATTISGARH HIGH COURT High Court Campus, Bilaspur (C.G.)

No. 127/C Risali Sector, Bhilai Distt. Durg (Chhattisgarh)

6. Arunesh Atmapoojya, aged about 31 years, son of Shri R.P. Atmapoojya, resident of D-69, P & T Colony, Gaigore Nagar, Raipur, Distt. Raipur (C.G.)

7. Chitralekha Kabirpanthi, daughter of Shri Dwarika Prasad Kabirpanthi, aged about 26 years, resident of 36/4 Kabirpanthi Kunj Radhika Nagar, Bhilai, District Durg (C.G.)

8. Miss Lata Smriti Baghel, aged about 25 years, daughter of Shri M.S. Baghel, resident of C/o. Shri V.S. Baghel, near Baba Drycleaners, Daulat Estate Danganiya, Raipur Chhattisgarh

9. Mrs Kiran Patel, aged about 24 years, wife of Dr. R.P. Patel, resident of S. MIG 115, Sector 4, Pt Deen Dayal Upadhyay Nagar, Raipur (C.G.)

10. Miss Durgesh Nandini Dewangan, aged about 29 years, daughter of C. L. Dewangan resident of Block No. 2/B, Street No.31, Sector 6, Bhilai Nagar, Distt. Durg (C.G.)

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Bilaspur Chhattisgarh

11. Mrs. Archana Baghel, aged about 37 years, C/o. Shri Sanjay Baghel, resident of C/o. Shri Sanjay Baghel, H No. 59 Near Rohinipuram Gate, Rohinipuram, Raipur, C.G.
12. Deepak Mahapatra, aged about 27 years, son of Late Shri Narendra Mahapatra, Bhairam Deo Ward, Jagdalpur, Bastar (C.G.)
13. Mrs. Rekha Sharma, aged about 28 years, wife of Shri Manoj Kumar Sharma, near Sahu Aata Chakki, Choubey Colony, Raipur Chhattisgarh.
14. Mr. Balram Ambade, son of Shri B.R. Ambade, aged about 28 years, resident of villae Thakurbandha PO Mudhapar, Tah A. Chowki, distt. Rajnandgaon (C.G.)
15. Nohar Kumar Dhiwar, aged about 27 years, son of Shri Indal Ram resident of PO Korasi, Distt. Raipur (C.G.)
16. Shashikant Tamrakar, son of Shri H.L. Tamrakar, aged about 29 years, resident of near Arohi Traers House Sunder Nagar, Raipur, Chhattisgarh.

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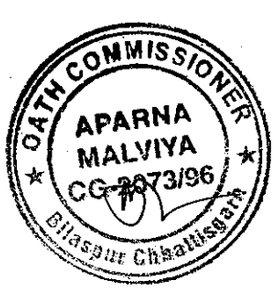
17. Amrita Shukla, aged about 26 years, daughter of Smt. Abha Shukla, and Shri Mahesh Kumar Shukla, resident of Hani Former, Raipur, Distt. Raipur (CG)
18. Kailash Kumar Dhruv, aged about 25 years, son of Shri Bisroo Ram Dhruv, resident of MIG II/195, Sector I, D.D.U. Nagar, Raipur, Chhattisgarh.

VERSUS

RESPONDENTS

1. The State of Chhattisgarh, through – the Secretary, Department of Higher Education, Mantralay, Dau Kalyan Singh Bhawan, Raipur (C.G.)
2. The Secretary Cum Assistant Director, Department of Technical Education, Directorate, Raipur (C.G.)
3. The Director, Department of Technical Education, Raipur (C.G.)
4. The Deputy Secretary, Chhattisgarh Government Technical Education, Janshakti Niyojan, Science and Technology Department, Raipur (C.G.)
5. The Additional Director, Department of Technical



Education, Directorate, Raipur (C.G.)

6. Pt. Ravishankar Shukla University, through – its Vice Chancellor, District Raipur (C.G.)

7. The University Grant Commission, through – its Chairman, Bahadurshah Jafar Marg, New Delhi.

8. Union of India, through – its Principal Secretary, Government of India, New Delhi.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

W.P.(S)-No. 6608/2006

मामला क्रमांक ..... सन् 200 71

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5-12-2006

Shri Saurabh Dangi, Advocate for the petitioners.
Shri Somesh Bajaj, Govt. Advocate for the State.
Heard on admission.

This petition is directed against recruitment proceedings initiated by respondent No. 3 vide advertisement of Annexure P-9. Petitioners are lecturers under the establishment of respondent No. 6.

Grounds of the petition are that the petitioners were appointed temporarily on contractual basis for a period of one month with a stipulation that on satisfaction and requirement of employer, period could be extended on a fixed pay, however Director, Department of Technical Education, Raipur –respondent No. 3 has invited applications for contractual appointment of one year for the post of Lecturers/Programmers in Government Engineering Colleges and Government Polytechnics vide advertisement dated 22-11-2006 of Annexure P-9 against the same posts on which the petitioners are serving since last 1½ . The eligibility criteria set up by the respondents for appointment vide Annexure P-9 is also contrary to the norms of University Grants Commission and regulations for appointment of lecturers. The petitioners could not be removed by the respondent authorities so long as work is available and their performance is satisfactory. They can also not be removed from the present posts unless Public Service Commission makes regular appointment against the posts on which the petitioners are working. Therefore, by the instant petition, the petitioners have prayed for direction to the respondents not to make any appointment on the posts of lecturers on which the petitioners are working and quash the advertisement of Annexure P-9.

Learned counsel for the petitioners submits that services of the petitioners cannot be replaced by another contractual employee and they can be replaced by only a regular employee. Reliance is placed in the matters of **Dr. Chanchal Goyal (Mrs.) –v- State of Rajasthan reported in 2003(3) SCC 485**. It was further argued

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मामला क्रमांक WP(S) No. 6608/2006 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that from the document of annexure P-8, the respondent No. 1 has communicated its decision and has allowed Government Naveen Engineering College, Raipur to continue with earlier system of teaching till regular officers/employees are recruited as per rules. It is argued that recruitment of petitioners on the above posts was made on the basis of open advertisement. Their appointment was though initially for a period of one month but period could be extended subject to availability of the posts and satisfaction of the employer, however by the advertisement of Annexure P-9, the respondents have initiated recruitment proceeding for appointment of contract teacher for a period of one year for the same posts against which the petitioners are working.

I have heard learned counsel for the petitioners. I have perused the documents annexed with the petition.

Advertisement of Annexure P-9 for recruitment of lecturers / programmers for contract appointment for a period of one year has been issued under Chhattisgarh Civil Service (Contract Appointment), Rules, 2004. The advertisement provides for reservation for different classes such as Scheduled Tribes, Scheduled Castes, Other Backward Classes and female. An eligibility criterion has also been given. Apart from this, due weightage for experience of the applicant has been given (Maximum 20 marks). On the other hand, advertisement of Annexure P-1 on the basis of which it is claimed that the petitioners were selected has not been issued under any statutory rules. The petitioners have not filed any appointment order to demonstrate that they were appointed after following due process of selection. Their service conditions shall be governed as per their appointment orders in case their appointment was made after following regular process of recruitment for appointment.

A constitution bench of Supreme Court in the matter of **Secretary, State of Karnataka and others –v- Umadevi reported in 2006(4) SCC 1 in para 52** has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

observed that in order to issue a mandamus to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. In the instate case, the petitioners have failed to establish that they have any legal right under statute or rule to enforce it. So far as the argument based on the judgment in the matter of **Dr. Chanchal Goyal** (Supra) that adhoc or temporary employee should not be replaced by another adhoc and he should be replaced only by a regular employee is concerned, from the advertisement of Annexure P-1 through which the petitioners claim that they were selected, it is clear that the post was initially a temporary post for a period of one month, which could be subsequently extended on the basis of satisfaction and as per requirement and the same was for a fixed pay. However, the advertisement of Annexure P-9 has been issued under C.G. Civil Service (Contract Appointment) Rules, 2004 whereby the State Government has framed rules for purposes of contract appointment. Under certain contingencies when the sovereign State or its instrumentalities will have to employ persons in posts which are temporary, on daily wages, as additional hands or taking them in without following the required procedure, to discharge the duties in respect of the posts that are sanctioned and that are required to be filled in terms of relevant procedure established by the Constitution or for work in temporary posts or projects that are not needed permanently. This right has been recognized by the constitution bench of Supreme Court in para 12 of the above judgment and, therefore, contention of the petitioner that their services cannot be replaced by another adhoc or temporary appointee is not acceptable particularly when recruitment proceedings have been initiated as per statutory rules framed by the State.

Apart from this, it is open to the petitioners to apply against the advertised posts vide Annexure P-9 which provides for extra weightage against experience. Since recruitment proceedings have been initiated under the statutory rules by the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondents and the fact that the petitioners have failed to demonstrate any legal right to hold the posts which they are occupying, instant petition for quashing recruitment proceedings initiated vide Annexure P-9 is devoid of substance and the same deserves to be dismissed. Accordingly, the petition is dismissed at admission stage.

Consequently, M.Cr.P. 4820/2006 stands disposed of.

Sd/-
Dhirendra Mishra
Judge

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